



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOO/166983

PRELIMINARY RECITALS

Pursuant to a petition filed June 29, 2015, under Wis. Admin. Code, §HA 3.03(1), to review a decision by the Jefferson County Dept. of Human Services to deny FoodShare benefits (FS), a hearing was held on July 22, 2015, by telephone.

The issue for determination is whether the county correctly included petitioner's ex-husband in petitioner's FS household when she applied in April, 2015.

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Sandra Torgerson
Jefferson County Dept. of Human Services
874 Collins Rd.
Jefferson, WI 53549

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Jefferson County.
2. Until March 1, 2015, petitioner received FS as a one-person household. In February, 2015, she had a review, and mentioned that she lived with her ex-husband and paid rent to him. The county worker sent petitioner paperwork, including a "Statement of Household Eating Details." Petitioner and her ex-husband signed the statement, and answered that they ate together.

3. The county then obtained petitioner's ex-husband's income information, and denied FS because income was over the limit for a two-person household.
4. Petitioner appealed, and told the county worker that the eating statement was wrong, that she and her ex-husband actually did not eat together. On May 12, 2015, the morning of the hearing, an investigator went to the residence, and petitioner's ex-husband refused to allow the investigator into the home.
5. On May 20, 2015, the Division of Hearings and Appeals issued a decision upholding the denial of FS (I was the ALJ who conducted the hearing and wrote the decision), saying

When petitioner reported that she and her ex-husband ate together, the worker correctly added him and his income to the case. When petitioner responded to the pending end of the FS due to her ex-husband's addition, the burden shifted to her to show that the original statement was wrong. Petitioner has not met that burden because the investigator was unable to complete his investigation.

See decision in case no. FOO-164913, page 3.

6. While the hearing was pending, petitioner reapplied for FS on April 29, 2015. The county withheld processing the application until after the hearing decision. On June 1, the county worker conducted an interview with petitioner in which she reiterated that she and her ex-husband purchased and prepared meals separately.
7. Based upon the hearing decision, the county concluded that petitioner's ex-husband could not be separated from petitioner for FS purposes. The county denied the April 29, 2015 application again based upon being over the limit for a two-person household.

DISCUSSION

The federal FS regulations define FS household composition as follows:

(a) *General household definition.* A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

1. An individual living alone;
2. An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or
3. A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. §273.1(a). The Department typically requires individuals living together to simply provide a statement indicating that they purchase and prepare meals separately. See FS Handbook, Appendix 1.2.6.2. However, if information regarding purchasing and preparing meals becomes questionable, the agency can request verification and even do a front end investigation. Handbook, App. 1.2.3.7 and 1.2.5.

I note initially that during the hearing Ms. Torgerson answered "no" to the question of whether the county conducted an interview with petitioner after her April 29, 2015 application. Ms. Torgerson was not the worker on the application and was uncertain of the events. After the hearing she contacted me and told me that a June 1 case note shows that the interview was completed. I told her to send the case note to Atty. [REDACTED] with an explanation. I suppose that if an interview was not completed it would show that the county did not follow the mandated procedure for a new application, but this case was hardly a typical case given the ongoing hearing process concerning the eating situation. A failure to conduct the interview

would not impact the determination of whether petitioner's FS unit should be one or two persons, but nevertheless it is apparent that an interview was conducted.

The issue before me, for a second time, is whether the county correctly required petitioner's ex-husband, and his income, to be part of petitioner's FS unit. Once again, I conclude that the agency acted correctly. As noted in the first decision, when petitioner and her ex-husband filled out the eating statement in February, 2015, they answered that they ate together. That was the only time they answered that question without knowledge that the answer would bring him into petitioner's FS unit, and thus, it could be inferred, was the only time they answered the question honestly. As noted in the prior decision, at this point the burden has shifted to petitioner to prove that they eat separately.

The only new evidence in this current hearing is a "Rental Agreement" with both signatures dated March 31, 2015 in which the parties state that petitioner must provide her own food, keep her food separate, and prepare her own meals. I cannot accept that agreement as anything but a piece of paper. First, it is clear that petitioner is desperate to get FS on her own despite living with a man with whom she has a personal, if not legal, relationship. More importantly, I find it curious, if not incomprehensible, that this document was not presented to the county agency or the Division of Hearings and Appeals at any time prior to the day before the hearing in this appeal. If the agreement was signed on March 31, 2015, why was it not mentioned at all in prior dealings with the county or during the May 12 hearing? I do not accept the "agreement" as proof that these two individuals purchase and prepare meals separately. All that is left is petitioner's self-serving statement that they do not eat together, and even that statement includes the proviso that sometimes they do eat together.

I conclude that the denial of the April 29, 2015 FS application was correct. Based upon the evidence, the county correctly considered petitioner to be part of a two-person household with monthly income above the FS limit.

CONCLUSIONS OF LAW

The county correctly determined petitioner to be part of two-person FS unit with income over the FS limit when she re-applied for FS on April 29, 2015.

THEREFORE, it is

ORDERED

That the petition for review herein be and the same is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 27th day of July, 2015

\sBrian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 27, 2015.

Jefferson County Department of Human Services
Division of Health Care Access and Accountability
Attorney [REDACTED] [REDACTED]